Supreme Court, U.S.
FILED
OCT 10 1997
CLERK

(2)

No. 97-435

In The

Supreme Court of the United States

October Term, 1997

ELMER RITTER and HELEN RITTER,

Petitioners,

v.

PEGGY S. ROSS, County Treasurer for Rock County, Wisconsin, and ROCK COUNTY, a body politic in the State of Wisconsin

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Wisconsin, District IV

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Peggy S. Ross and Rock County, by their undersigned counsel, respectfully request that this Court deny the Petition for Writ of Certiorari to the Court of Appeals of Wisconsin, District IV, seeking review of the Decision and Order of the Court of appeals in this case.

COUNTERSTATEMENT OF THE CASE

A. The Petitioners misrepresent how Rock County came to foreclose the tax lien for delinquent taxes on petitioners' former land.

1. Petitioners failed to pay real estate taxes assessed against their property despite receiving numerous notices and communications from the County urging them to do so or provide documentation that they had already done so.

The history of this case is not what petitioners would have it seem. The petitioners, Elmer and Helen Ritter (hereinafter "petitioners" or "Ritters"), declare to this court that "[o]n October 30, 1989, . . . [petitioners] . . . lost their 35 acre farm for the *alleged* failure to pay $84.43 in property taxes. . . . " Petition at 4. The petitioner's claim thus appears to be that they had, in fact, paid their taxes and, through no fault of their own, have been deprived of their property by an errant bureaucracy. This was their posture when they sought to go directly into federal court, unsuccessfully trying to short-circuit Wisconsin's approach to processing such tax disputes. See Petition, fn

1 at 1-3; *Ritter v. Ross*, 992 F.2d 750, 751 (7th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 694, 126 L.Ed.2d 661 (1994). Respondents, Peggy S. Ross, as County Treasurer for Rock County, and Rock County (hereinafter "Rock County," or "the County") were responsible for administering the collection of real estate taxes due with regard to more than five thousand parcels located within Rock County. (R. Doc. 77, pp. 204-205) Helen Ritter had been a licensed real estate broker/salesperson in Illinois and Wisconsin for many years previous. (App. at A-20; R. Doc. 77, pp. 113-114) Sometime early in 1985, the Ritters had received a document entitled, "STATEMENT OF REAL ESTATE TAXES FOR THE YEAR 1984" from the treasurer of the Town of Newark. (R. Doc. 77, p. 61; R. Doc. 79; App. at A-25-26) The statement contained a substantial amount of information regarding the description, assessed valuation and estimated fair market value of the subject property, the amount and rate of assessment of each taxing jurisdiction, as well as other information involved in the calculation of the actual amount of real estate taxes due. At the upper right corner, the statement contained the warning that, "DELINQUENT TAXES ARE SUBJECT TO INTEREST FROM JANUARY 1ST UNTIL PAID, AND ALSO MAY BE SUBJECT to AN ADDITIONAL PENALTY." (R. Doc. 79) Below this warning, the statement noted that the total amount of the 1984 property taxes due on the subject parcel was $710.03, which could be paid in two installments of $355.02 and $355.01 on February 28, 1985, and July 31, 1985, respectively, or full payment would be due by February 28, 1985. (R. Doc. 79)

As a licensed real estate businesswoman for decades before her tax delinquency arose, Helen Ritter had received specific training with regard to the impact of real estate liens on interests in real property, including those liens arising from delinquent real estate taxes. (R. Doc. 77, pp. 112-113) She acknowledged that she understood the significance of the "NOTICE OF REDEMPTION TAXES" which appeared on her tax bill each year starting with the 1985 taxes. (App. at A-26; R. Doc. 77, pp. 116-117)

At trial, Helen Ritter initially testified that she had mailed the second installment of property taxes in July of 1985, using a money order, suggesting that this was the first of two such money orders she had sent to pay up the last installment of 1984 taxes and which petitioners claimed were lost or misplaced by the County. (R. Doc. 77, pp. 63-64).

However, on cross-examination at trial with regard to an exchange of letters between the county treasurer's office and herself dated December 3, and 9, 1985 (R. Doc. 77, pp. 121-123), Helen Ritter admitted that she had realized back in 1985, or by February 1, 1986 at the latest, that she or Elmer Ritter had cashed the money order she had purchased in July, 1985 and used the proceeds to pay something else. (See discussion in Court of Appeals decision, App. at A-20-24; R. Doc. 77, p. 125)

Petitioners' own evidence showed that as a result of their actions, they were more than six months delinquent in submitting payment of the second installment due on the 1984 taxes, even if they did actually attempt to send in this payment as they currently claim. (R. Doc. 81; R.

Doc. 77, pp. 63-64) As an experienced businesswoman, Helen Ritter was able to appreciate that the type of money orders she utilized meant that the "receipts" she copied and sent to the county treasurer's office, being totally within her control, were susceptible to manipulation and lacked meaningful value as documentation that the money orders had been utilized as claimed. Yet, petitioners refused repeated County requests for other evidence of payment. (App. A-22-24; R. Doc. 77, pp. 118-119)

Helen Ritter's only explanation for why she had not arranged to cancel the wayward money order and make the final payment of 1984 taxes due, immediately upon being advised that the county treasurer had not received the second money order she says she purchased in February, 1986, was that she "must have had a mental block." (R. Doc. 77, pp. 126-127) The trial court made a factual finding "[t]hat the 1984 real estate taxes on the Ritter property were not paid" (App. at A-4) This finding has not been challenged in the Petition filed with this Court, nor was it challenged in the appeal to the Wisconsin Court of Appeals which petitioners seek to have this Court review. (App. at A-19, fn 2)

B. The Petitioners misrepresent relevant Wisconsin Law and the precedent of this Court which they cite in support of their arguments.

Section 75.521 of the Wisconsin Statutes provides a detailed procedure for the collection of local property taxes that are essential to the operation of the several units of local government in Wisconsin. Several relevant portions are set forth in the Appendix to the petition.

(App. A-52-65) The statutory design set up in Section 75.521, provides a method of foreclosing tax delinquencies on real estate to establish marketable title free of the liens of third-parties and the ownership interest of the previous holder. Petitioners contend that the notice utilized by Rock County, as required by Section 75.521, "is contrary to the established requirements of procedural due process annunciated by this Court in decisions dating from *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 76 S.Ct. 652 (1950)." Petition at 9.

The Court of Appeals responded specifically to the cases of this Court cited by petitioners, noting in their analysis that due process is a "flexible concept", that "must give 'due regard for the practicalities and peculiarities of the case' at hand." App. at A-33-34, quoting, *Mullane*, 339 U.S. at 314-15, as well as Wisconsin caselaw. *Memphis Light, Gas & Water Division v. Craft, Co.*, 436 U.S. 1 (1978) was specifically discussed by the Court of Appeals and distinguished, along with other cases relied upon by petitioner, as not reflecting the relevant context of "a tax sale of real estate such as the Ritters'." App. at A-37-38. Without offering any logical explanation how this is so, petitioners merely persist in criticizing the legal conclusions reached by the Court of Appeals, loosely referring to grossly distinguishable prior decisions of this Court as though the differences pointed out by the Court of Appeals can be obliterated by repetition and willfulness. Petitioners take the same liberties in summarizing the Court of Appeals decision set forth in the Appendix to their Petition that they take with regard to the precedents of this Court. For example, petitioners refer to the Wisconsin Court of Appeals as "acknowledging that the

notice did not comply with the pronouncements of this Court with respect to the requirement of due process as set out in *Memphis Light*. . . . " Petition at 17. This is hardly a literal translation of the Court of Appeals' statement of its understanding of this Court's ruling in *Memphis Light*.

> . . . The Court makes clear, however, that it considered the termination of utility service to be a special situation because of the health and safety concerns that accompany cessation of heat, light and water services, [citation omitted] . . . We are not at all persuaded that *Memphis Light* requires such expanded notice with respect to a tax sale of real estate such as the Ritters'. App. A-37-38.

The significance of the context of Section 75.521 and other tax related Wisconsin statutes in gauging the adequacy of the notice given in the foreclosure of tax liens in Wisconsin was emphasized by the Court of Appeals. Included in its decision in this case was the observation made by the Wisconsin Supreme Court in a challenge to the same statute arising many years earlier, regarding the reasonableness of believing the notice required by Section 75.521(6) (see App. at 58-62) would adequately advise the persons receiving it of the pending proceedings.

> "[O]ther statutes have provided for notice to the taxpayer of assessment; opportunity to examine the tax rolls; time and place of hearing before the board of review; time, place and method of payment; delinquency; sale; time limitation for redemption, etc. . . . Such notice is sufficient to satisfy the requirements of due process."

App. at A-40-41, quoting *Devitt v. Milwaukee*, 261 Wis. 276, 278, 52 N.W.2d 872, 873 (1952).

The notice here, coming as it did after all the other procedures and notices pertaining to the assessment and collection of real estate taxes in Wisconsin, told petitioners that their property was in the process of being foreclosed, that they had a right to redeem by the deadline, and cited the statutes, had they wanted to use the limited answering procedure spelled out thereunder. In short, petitioners had every opportunity to protect their property; due process requires no more. While the Ritters complain that the Court of Appeals distinguished the non-real estate taxation cases they cited from this case, they offer no support in their Petition for the proposition that this is not consistent with the rationale contained in those cases.

Section 75.521(6) tracks closely the limited, *"In Rem"* nature of the procedure authorized by that statute and requires that the notice include the statement "No personal judgment will be entered herein for such taxes, assessments or other legal charges or any part thereof." (App. at A-60) Obviously, the limitation on the government unit's ability to seek a personal judgment reduces the possible reasons why a former property owner might choose to undertake the further expense of fighting to maintain title to property which had proven difficult to keep free of delinquent taxes. Petitioners cry that this statement in the notice is "even misleading." (Petition at 13) without showing how they come to that assertion. The record reflects the judicial finding that Helen Ritter, at least, understood about the foreclosure of unpaid real

estate taxes and should not have been misled by this language. (App. at A-26)

The Foreclosure of tax liens by action *in rem* procedure under Section 75.521, Wis. Stats., which Rock County was following at all times, was reasonably intended to apprise taxpayers much less able than the Ritters of the pendency of any adverse action. In accordance with Section 75.521(12)(b), Wis. Stats., a guardian ad litem must be appointed to serve, in the proceedings at issue for all such proceedings, for all persons known or unknown who have or may have an interest in the lands described in any list and who are or may be minors or incompetents at the date of filing such list. Petitioners rightly declare that the fundamental requisite of due process is the right to be heard (Petition at 9), where there is in fact process which is due. *Waukesha County v. Young,* 106 Wis. 2d 244, 249, 316 N.W.2d 362, 365 (1982) was cited by the Court of Appeals for the proposition adhered to in Wisconsin caselaw that taking of land for failure to pay property taxes is a drastic remedy requiring strict compliance with statutory procedures. (App. at A-41, fn. 11) Consistent with that view, Wisconsin courts have held that motions seeking relief from a tax foreclosure judgment on the ground that it is void for noncompliance with the statutory requirements or insufficient service to satisfy the requirements of due process "are permissible if brought within a reasonable time' " *Young,* 106 Wis.2d at 253.

However, the Court of Appeals corrected the trial court by noting that a tax deed results from the foreclosure of a tax lien under section 75.521, Wis. Stats., and "foreclos[es] all rights, titles, interests, liens, and claims

in the property . . . subject to the foreclosure.' " (App. at a-27, fn. 5), quoting *Leciejewski v. Sedlak*, 116 Wis.2d 629, 639, 342 N.W.2d 734 (1984). For this reason, as noted by the Court of Appeals, there is no basis for petitioners having any claim of interest in their former property, once the tax lien is foreclosed and tax deed title vests in the County. See App. at a-20, discussing *Oosterwyk v. Milwaukee County*, 31 Wis.2d 513, 517, 143 N.W.2d 497, 499, *cert. denied*, 385 U.S. 981 (1966). And it is well-established that to maintain a claim under the Takings Clause, a party must have an interest in the property at the time it is alleged to have been taken by the government. App. A-28, citing *United States v. Dow*, 357 U.S. 17, 20 (1958). For this reason the petitioners had no right to any proceeds from a subsequent sale or other profitable use of this property after they lost it.

REASONS FOR DENYING THE WRIT

A. The Wisconsin Court of Appeals properly applied the relevant precedents of this Court to the facts of this case.

A property owner is responsible to know the laws governing ownership of real property. Under the jurisprudence of this Court, State law generally governs the nature of interests in real property. *Texaco, Inc. v. Short*, 454 U.S. 516, 70 L.Ed.2d 738, 102 S.Ct. 781 (1982), contains discussion regarding a long line of Supreme Court decisions upholding the power of a State to broadly define the nature of property rights recognized and enforced under the laws of that State. That case, itself, dealt with

the constitutionality of the Indiana Mineral Lapse Act, in its provisions conditioning the retention of a property right upon the performance of an act (filing a statement of claim) by the owner of a property interest (mineral right) within a limited period of time (20 years). The Court discussed cases involving claims that states had not adequately notified property owners of the legal requirements of statutes affecting their property rights. This Court said the question raised was simply how a legislature must go about advising its citizens of actions that must be taken to avoid a valid rule of law.

> "The answer to this question is no different from that posed for any legislative enactment affecting substantial rights. Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. . . . *It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property.*"

Texaco, Inc. v. Short, supra, 70 L.Ed.2d at 752, emphasis supplied.

The constitutional law is clear that all that is required of a notice of lien foreclosure to meet due process requirements is "a notice reasonably calculated, under all the circumstances, to apprise the holder of a legally protected interest in the property of the *pendency of the action*, and to afford the interest holder an opportunity to present his or her objections. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983). In other words, a state must make efforts to provide actual notice

to all interested parties. The Wisconsin Statute undertakes to proceed in rem, by making the land, as such, answer for delinquent real estate taxes. The primary object of the statute is to reach the land which has been assessed. The notice requirement has been determined to be satisfied by mail service to the person having an interest in the land. See the discussions of The Supreme Court's Construction of Due Process Requirements Regarding Notice in Proceedings to Foreclose Real Property Tax or Similar Lien found at Anno, 77 L.Ed.2d 1485 and Anno, 1 L.Ed.2d 171. No cases cited therein require that an interest holder be given more notice than the fact that the action has been commenced for foreclosure of the tax lien. There is no overlay requirement of notifying the interest holder of what additional statutory rights they may have.

In *Weigner v. City of New York,* 852 F.2d 646 (2nd Cir. 1988), the city "gained possession of property worth between $183,000 and $250,000, because an elderly out-of-state widow failed to pay less than $10,000 in property taxes." Dissent, at 657. More often than not, foreclosure is a losing proposition and because it happens only due to the plaintiff's failures it does not constitute a "taking" for purposes of the Fifth Amendment.

Where there is no nexus between the facts alleged and a deprivation of a constitutionally protected right, a complaint will be dismissed for failure to state a cause of action under 42 U.S.C. Section 1983. *Asher v. Harrington,* 318 F. Supp. 82 (E.D. Wis., 1970), *aff'd,* 461 F.2d 890 (7th Cir. 1972). Governmental officials must be found to have

acted with deliberate indifference. The Seventh Circuit Court of Appeals has defined "deliberate indifference" as "actual knowledge of impending harm easily preventable, so that a conscious, culpable refusal to prevent the harm can be inferred from the defendant's failure to prevent it." *Santiago v. Lane*, 894 F.2d 218, 221 n.7 (7th Cir. 1990). Negligent conduct may not form the basis of a claim under 42 U.S.C. 1983. *Daniels v. Williams*, 474 U.S. 327 (1986)

Petitioners' claims under section 1983 are barred by the doctrine of qualified immunity. A government official exercising a discretionary function is shielded from liability and suit in a Section 1983 action unless the official violated a clearly established constitutional right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Anderson v. Creighton*, 483 U.S. 635 (1987). The constitutional right must be clearly established in a particularized sense. *Anderson*, 483 U.S. at 639. Plaintiff bears the burden of proving the existence of a clearly-established right. *Alvarado v. Picur*, 859 F.2d 448, 452 (7th Cir. 1988).

B. The presumption under 42 U.S.C. §1988 in favor of awarding attorney fees to a prevailing plaintiff does not apply where, as under the facts of this case, an award of fees would be unjust.

There is a virtual continuity of principles underlying the legal doctrines which the Ritters seek to invoke to their betterment, which more strongly supports the opposite result. Opposing counsel cite correctly the overall intent of §1988 as being that a prevailing plaintiff "should

ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1934 (1983). However, we can think of few circumstances less appropriate to make such an award as are present in this case. The neglectful, if not more questionable, contributions which the Ritters made toward the result of the foreclosure of an $84 tax lien on their property and their stubborn insistence on making this a major federal case, rather than attempting to work cooperatively closer to home to resolve the real questions (for instance, the fact, admitted by Helen Ritter, that they were six months delinquent in making the second payment on their 1984 real estate taxes. (R. Doc. 77, p. 124)

Although mindful of the continuing need for public officials to be as responsive as possible to the varying circumstances of individual members of the public, we submit that under "the totality of the record of this case," making the other taxpayers of Rock County, many of whom struggle meeting their share of property tax burdens, pay the attorney fees of the Ritters, "would render such an award unjust." *Busche v. Burkee*, 649 F.2d 509, 521 (1981).

The Ritters have seemed, from the start, to have been as laggard in their willingness to explore the procedures provided under the real estate tax collection system, as they have been eager to pursue a federally based remedy for all the ills they have experienced. On the record of the marathon legal adventure which has come out of $84.43 in unpaid taxes, Helen Ritter has managed to make a mind-numbing maze out of construing the "NOTICE OF REDEMPTION TAXES" which appeared on her tax bill

for years. She was a licensed real estate businesswoman for decades before her tax delinquency arose. She had received specific training with regard to the impact of real estate liens on interests in real property, including those liens arising from delinquent real estate taxes. (R. Doc. 77, pp. 112-113) She had been involved in so many lawsuits that she was unable to recall major aspects of those lawsuits in which she was involved between the time her 1984 taxes became delinquent and the September, 1994 trial of this matter. She could not recall whether or not she had drafted and filed her own answer and counterclaim in one suit. (R. Doc. 77, pp. 107-108) She could not even recall the sequence of the lawsuits she was involved in during the preceding four period between 1985 and 1989. (R. Doc. 77, pp. 108-109)

Respondents agree that the drastic nature of the foreclosure of real estate tax liens and the important constitutional principles which have been invoked by petitioners justify the careful judicial scrutiny which has previously been afforded to petitioners' complaints by the many federal and state judges who have already considered the matters raised by the Ritters and the able and energetic lawyers who have represented them. But, Rock County respectfully submits the trial court and the Wisconsin Court of Appeals properly reached the conclusion that petitioners have exhausted the limits of the relief which should be given to them in this case. We believe this conclusion is well-supported by the gritty truths revealed by the factual record of the short two day jury trial had below, in this matter, which was cut dramatically short by

the strong reaction which the trial judge had to the witnesses' testimony and factual evidence he so closely observed.

As the record reveals, the Ritters certainly had more of a day in court, and received an emotionally sympathetic response, if not a gratifying legal result, because of the characterization of their plight which they were able to achieve in the context of the motion practice exercised in the petitioners' journey up through virtually the entire federal judicial system, while they had successfully kept on hold the state lawsuit which by every design of law was intended to offer them the more expedient and less costly way to protect their interest in the subject property.

Compare the poignant observations of Judge Wood of the Seventh Circuit Court of Appeals in *Ritter v. Ross*, 992 F.2d 750 (7th Cir. 1993), *reh'g denied, cert. denied*, 114 S.Ct. 694, 126 L.Ed.2d 661 (1994) ("For want of a nail the shoe is lost, . . . ") and at p. 755 (" . . . we must admit our surprise and dismay that the dispute over the Ritters' alleged back taxes was not solved in Rock County."), with the remarks of Judge Welker, after his direct observation in the temporary absence of the jury of what the County intended to bring out in its cross-examination of Helen Ritter in the trial below.

> " . . . just so there is no question when we reconvene here [in the presence of the jury] about what the court will and will not permit, the testimony – the test of what is relevant is whether it makes an ultimate fact more likely than would be true without that testimony. And in this regard, I do not think that the testimony that Ms. Ritter has an abrasive personality or

generally and with respect to other people is relevant. Obviously she has now said that Miss Ross treated her unkindly in a phone conversation . . . And if there was some sort of abrasive talk on that occasion that would be proper. But whether Miss Ritter gets along with other people or not I don't think is relevant to this lawsuit. Also, I don't think that the specific nature of other lawsuits and their outcome, whether somebody did or didn't get a judgment against her, I don't think any of that is relevant to this lawsuit . . . and I think that whatever marginal relevance it may have would be outweighed by the unfair prejudicial effect. Now, having said that, *I do believe that it is relevant that she is a real estate broker. That she has asserted in court under oath that she is an expert on matters that real estate brokers are trained in.* And I believe the real estate examining board even has questions on real estate taxes. I am not positive about that. But any related matter that has to do with her knowledge of these things *and she is a real estate broker and licensed and has been licensed as a real estate salesperson in Illinois that she has testified in court that she is an expert witness in those areas I believe that is relevant. Further, I believe that it is relevant that she has been involved in several pieces of litigation, and is therefore conversant with the legal process and that she has drafted pleadings on her own behalf and filed those pleadings in other lawsuits and that she has on occasions hired lawyers to represent her in other matters and therefore knows the importance of having a lawyer. I think all of those matters are relevant. They go to the question of her ability to understand the importance of a legal*

document and her ability to understand the communications that she did have."

(R. Doc. 77, pp. 104-106; emphasis supplied)

As is clear from the trial record, by the time the second installment of the petitioners' 1984 taxes were noted to be overdue, Helen Ritter had developed a remarkable familiarity with the process of legally resisting demands asserted against her and her husband, by fashioning defenses and counterclaims on her own, while bringing in so many different attorneys when that seemed wise, that she confessed to not being able to remember who they were (R. Doc. 77, pp. 97, 152), or what they had discussed with her. (R. Doc. 77, pp. 109-111, 127-129, 132) In fact, Mrs. Ritter apparently had been involved in so much litigation in her subsequent Wisconsin based career that she was unable to recall whether or not she had been personally involved in litigation while working as a real estate sales person in Illinois. (R. Doc. 77, p. 113)

It is elemental that there has to be a truly reasonable need to invoke federal law in defense of federally protected civil rights, before reasonable attorney's fees are properly available under 42 U.S.C. §1988. We believe that the Ritters' real problem with the trial court's ruling stems from the actuality, apparent from the record viewed as a whole, that what Judge Welker found was not that there in fact was a violation of the federally protected civil rights of the Ritters, but rather, that the trial court found to be Rock County's good faith misinterpretation of Sections 75.521 and 75.69, Wis. Stats., would have resulted in such an unconscionable (to Judge

Welker) windfall to Rock County that it seemed tantamount to a civil rights violation if the trial court were not able to act on the interpretation of those state statutes which the trial judge determined he could adopt only on the basis of avoiding constitutional harm (perhaps, since more general equitable principles did not seem to fit petitioners' circumstances). This was not an instance of the trial court being confused between the nature of punitive and compensatory damages, as claimed by petitioners, but of the trial judge believing that construing state law and constitutional principles in the particular, combined manner that he did best serve the overall goals of justice. As the Wisconsin Court of Appeals and the Wisconsin cases cited, earlier show, this was consistent with the broad powers of the judiciary under section 75.521 (14a) (see App. at A-62-65); *Waukesha County v. Young*, supra.

This view is in accord with *Williamson Regional County Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985). In *Williamson* it was held that a Section 1983 regulatory taking claim is not ripe unless or until (1) the plaintiff obtains a final decision and (2) seeks just compensation through available state procedures. This second test of *Williamson* requires that if a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the state procedure and has been denied just compensation. *Williamson*, p. 195. The taking clause does not proscribe the governmental taking of property, but only taking without just compensation. Thus, no constitutional violation occurs until just compensation has been sought and denied at a final stage

of the process available under local law. The Ritters were not denied just compensation by Judge Welker.

Respondents respectfully submit that in the event constitutional infirmities are found, the award of attorney fees should be considered in the light of the specific facts of this case.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Writ of Certiorari and affirm the Wisconsin Court of Appeals' decision dismissing the Ritters' complaint for failure to show any violation of federally protected right.

Dated this 10th day of October, 1997.

Respectfully submitted,

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